



NATIONAL ELECTRIC POWER REGULATORY AUTHORITY  
Islamic Republic of Pakistan

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OFFICE OF THE  
REGISTRAR

No. NEPRA/CAD/TCD-09/12065-12/03


August 31, 2016

Chief Executive Officer  
K-Electric Limited, KE House No.39-B,  
Sunset Boulevard Phase-II,  
Defense Housing Authority,  
Karachi

Subject: **DECISION IN THE MATTER OF COMPLAINTS FILED BY INDUSTRIAL CONSUMERS OF K-ELECTRIC LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LTD REGARDING ISSUANCE OF NOTICES ON ACCOUNT OF UNDER-UTILIZATION OF SANCTIONED LOAD**

Please find the Order of NEPRA in the subject matter for compliance.

Encl: As above

  
31/8/16  
(Iftikhar Ali Khan)  
Director

Copy to:

1. Mr. Arif Lakhany, Chairman, All Pakistan Textile Processing Mills Association, H-16, Textile Avenue, S.I.T.E, <u>Karachi</u> .	2. Chairman, S.I.T.E Association of Industry, Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, <u>Karachi</u> .
3. Chairman, Fuel, Gas & Power Sub- committee, S.I.T.E Association of Industry, Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, <u>Karachi</u> .	4. Chairman, Federal B. Area Association of Trade & Industry (FBAATI), ST-7, Block-22, Federal B. Industrial Area, <u>Karachi</u> .
5. Chairman, Public Sector Utilities, Power & Gas Sub-committee, KCCI, KCCI's Building, Aiwan-e-Tijarat Road, Off. Shakra-e-Liaquat, <u>Karachi</u> .	6. Wintex Industries (Pvt.) Limited (WIPL), F-300, S.I.T.E, Textile Avenue, Street No. 6, <u>Karachi</u> .
7. Husein Industries Limited, IFT-8, Landhi Industrial & Trading Estate, <u>Karachi</u> .	8. Decent Packages (Pvt.) Limited, F/135 & F/194, S.I.T.E, <u>Karachi</u> .
9. Shan Paper & Board Mills, Plot No. SC-10, Sector 26, Korangi Industrial Area, <u>Karachi</u> .	10. Ahmad General Mills, W.S.A 4, Block-17, Federal B. Area, <u>Karachi</u> .
11. Paramount Lacc, 104, Adamjee Dawood Road, <u>Karachi</u> .	12. Syntech Fibres (Pvt.) Limited (SFPL), 5-3-1, Sector 15, Korangi Industrial Area, <u>Karachi</u> .

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13.	Hamza Vegetable Oil Refinery & Ghee Mills (Pvt.) Limited (HOGML), 1-B, Garden Block, Garden Town, <u>Lahore.</u>	14.	Acme Mills (Pvt.) Limited, A-3, Street # 4, S.I.T.E., <u>Karachi.</u>
15.	Arabian Textile Mills, Plot No. F-72, S.I.T.E., <u>Karachi.</u>	16.	Barkah Textile & Printing Mills (Pvt.) Limited, D-14, Manghopir Road, S.I.T.E, <u>Karachi.</u>
17.	Dalal Industries (Pvt.) Limited, F-299/A, S.I.T.E, <u>Karachi.</u>	18.	Danpak Food Industries (Pvt.) Limited, E-29, S.I.T.E, <u>Karachi.</u>
19.	Genitex Industries, F-368-A, Near Brigade Station, S.I.T.E, <u>Karachi.</u>	20.	Kruddson (Pvt.) Limited, C-7, South Avenue, S.I.T.E, <u>Karachi.</u>
21.	Unique Weaving, F-447, S.I.T.E, <u>Karachi.</u>	22.	Unibro Industries Limited, F-239, Workers Road, S.I.T.E, <u>Karachi.</u>
23.	Security Papers Limited, Jinnah Avenue, Malir Halt, <u>Karachi.</u>	24.	Rizwan Enterprises, F-50, S.I.T.E Area, Near SSGC, <u>Karachi.</u>
25.	Rasheed Enterprises, F-259, Rasheedabad, <u>Karachi.</u>	26.	Soorty Enterprises (Pvt.) Limited, Plot 26, Sector 23, Korangi Industrial Area, <u>Karachi.</u>
27.	Rastec Industries, Plot No.L-28/4, L-28/5 & L-28/6, Block- 22, F.B. Industrial Area, <u>Karachi.</u>	28.	Hub Leather (Pvt.) Limited, Cavish Court, A-35, Block 7/8, K.C.H.S.U, Sharea Faisal, <u>Karachi.</u>
29.	Jamal Industries, A-24/B, S.I.T.E, <u>Karachi.</u>	30.	Maqsood Industries, D-87, S.I.T.E, <u>Karachi.</u>
31.	Pearl Embroidery, F-748-I, S.I.T.E, <u>Karachi.</u>	32.	Rauf Qasim Textile (Pvt.) Limited, A/15-B, Binoria Chowk, S.I.T.E, <u>Karachi.</u>
33.	As'habi Textile Mills (Pvt.) Limited, D-24, South Avenue, S.I.T.E, <u>Karachi.</u>	34.	Al-Hamza Industries, D-10, S.I.T.E, <u>Karachi.</u>
35.	Arif Industries, F/152, Hub River Road, S.I.T.E, <u>Karachi.</u>	36.	Indus Pencil Industries (Pvt.) Limited, B-54, S.I.T.E, Manghopir Road, <u>Karachi.</u>
37.	Aneela Naeem, Plot No. F-98-H, Hub River Road, S.I.T.E, <u>Karachi.</u>	38.	Shaheena Textile Industries, 27, Rawalpindi Wala Building, Nikal Road, <u>Karachi.</u>



**BEFORE THE**  
**NATIONAL ELECTRIC POWER REGULATORY AUTHORITY**  
**(NEPRA)**

**Mr. Arif Lakhany,**  
**Chairman, All Pakistan Textile Processing Mills Association,**  
H-16, Textile Avenue, S.I.T.E, Karachi.

**Chairman, S.I.T.E Association of Industry,**  
Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, Karachi.

**Chairman, Fuel, Gas & Power Sub-committee, S.I.T.E Association of Industry,**  
Aiwan-e-Sanat, H-16, Textile Avenue, S.I.T.E, Karachi.

**Chairman, Federal B. Area Association of Trade & Industry (FBAATI),**  
ST-7, Block-22, Federal B. Industrial Area, Karachi.

**Chairman, Public Sector Utilities, Power & Gas Sub-committee, KCCI,**  
KCCI's Building, Aiwan-e-Tijarat Road, Off. Shakra-e-Liaquat, Karachi.

**Wintex Industries (Pvt.) Limited (WIPL),**  
F-300, S.I.T.E, Textile Avenue, Street No. 6, Karachi.

**Husein Industries Limited,**  
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**Decent Packages (Pvt.) Limited,**  
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**Shan Paper & Board Mills,**  
Plot No. SC-10, Sector 26, Korangi Industrial Area, Karachi.

**Ahmad General Mills,**  
W.S.A 4, Block-17, Federal B. Area, Karachi.

**Paramount Lace,**  
104, Adamjee Dawood Road, Karachi.

**Syntech Fibres (Pvt.) Limited (SFPL),**  
5-3-1, Sector 15, Korangi Industrial Area, Karachi.

**Hamza Vegetable Oil Refinery & Ghee Mills (Pvt.) Limited (HOGML),**  
1-B, Garden Block, Garden Town, Lahore.



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**Dalal Industries (Pvt.) Limited,**  
F-299/A, S.I.T.E, Karachi.

**Danpak Food Industries (Pvt.) Limited,**  
E-29, S.I.T.E, Karachi.

**Genitex Industries,**  
F-368-A, Near Brigade Station, S.I.T.E, Karachi.

**Kruddson (Pvt.) Limited,**  
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**Unique Weaving,**  
F-447, S.I.T.E, Karachi.

**Unibro Industries Limited,**  
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**Security Papers Limited,**  
Jinnah Avenue, Malir Halt, Karachi.

**Rizwan Enterprises,**  
F-50, S.I.T.E Area, Near SSGC, Karachi.

**Rasheed Enterprises,**  
F-259, Rasheedabad, Karachi.

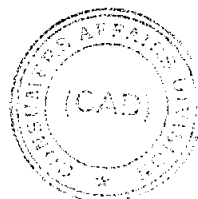
**Soorty Enterprises (Pvt.) Limited,**  
Plot 26, Sector 23, Korangi Industrial Area, Karachi.

**Rastec Industries,**  
Plot No.L-28/4, L-28/5 & L-28/6, Block-22, F.B. Industrial Area, Karachi.

**Hlub Leather (Pvt.) Limited,**  
Cavish Court, A-35, Block 7/8, K.C.H.S.U, Sharea Faisal, Karachi.

**Jamal Industries,**  
A-24/B, S.I.T.E, Karachi.





**Maqsood Industries,**  
D-87, S.I.T.E, Karachi.

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A/15-B, Binoria Chowk, S.I.T.E, Karachi.

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Plot No. F-98-H, Hub River Road, S.I.T.E, Karachi.

**Shaheena Textile Industries,**  
27, Rawalpindi Wala Building, Nikal Road, Karachi.

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**Complainants**

**Versus**

**K- Electric Limited (the then Karachi Electric Supply Company Limited (KESCL)**

KE House, 39-B, Sunset Boulevard,  
DHA-II, Karachi.

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**Respondent**

**Date of Hearing:** 18<sup>th</sup> March 2016

**Date of Decision:** August 29, 2016

**On behalf of:**

**Complainants:**

- 1) Mr. Iftikhar Ahmed, CEO, Bin Qasim Trade Industry
- 2) Engr. Nisar Ahmad, Ex-Officio, S.I.T.E
- 3) Mr. Ahmed Jawed
- 4) Mr. Masroor Ahmad, FBAATI
- 5) Mr. Jawed Bilvani, Pakistan Hosiery Manufacturing Association (PHMA)
- 6) Mr. Adnan Iqbal, Advocate PHMA

*A*



- 7) Mr. Tanveer Barry, KCCI
- 8) Mr. Rashid Maqbool, Director SFPL
- 9) Dr. Q. A. Kamal, KCCI
- 10) Mr. Sultan Mahmood, Advocate
- 11) Mr. M. Siddiq, Business
- 12) Mr. Ali Muhammad, Business
- 13) Mr. Rana Maqbool, Business
- 14) Mr. Munir Umer, Director WIPL
- 15) Mr. M. Imran, WIPL
- 16) Mr. M. Javed, WIPL
- 17) Mr. Kareemdad, Advocate
- 18) Mr. Sh. M. Mazhar Hussain, HOGML
- 19) Mr. Nazir Hussain, Advocate
- 20) Mr. M. Hayat, M/s M. Hanif Industries
- 21) Mr. Ayaz Nagori

**Respondent:**

- 1) Mr. Arshad Iftikhar, Director
- 2) Mr. Rafique Ahmed Sheikh, GM (Regulations)
- 3) Mr. Imran Hanif, A.M.

Subject: **DECISION IN THE MATTER OF COMPLAINTS FILED BY INDUSTRIAL CONSUMERS OF K-ELECTRIC LIMITED UNDER SECTION 39 OF THE REGULATION OF GENERATION, TRANSMISSION AND DISTRIBUTION OF ELECTRIC POWER ACT, 1997 AGAINST K-ELECTRIC LIMITED REGARDING ISSUANCE OF NOTICES ON ACCOUNT OF UNDER-UTILIZATION OF SANCTIONED LOAD**

**ORDER**

In compliance with the Judgment of the Honorable High Court of Sindh, Karachi dated 23<sup>rd</sup> September 2015 in Constitutional Petition No. D-956 of 2012: Karachi Electric Supply Company Limited & another vs. NEPRA & others, this order shall dispose of complaints of Mr. Arif Lakhany, Chairman, All Pakistan Textile Processing Mills Association, Karachi and others (hereinafter referred to as the "Complainants") under Section 39 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (hereinafter referred to as the "NEPRA Act") against K-Electric Limited, the then Karachi Electric Supply Company Limited (hereinafter referred to as the "Respondent" or "KE").

2. Brief facts of the case are that NEPRA received complaints from numerous industrial consumers of KE regarding issuance of disconnection notices by KE on account of under-utilization of sanctioned load. The Complainants requested NEPRA to look into the matter and direct KE to refrain from issuing such notices.

3. The matter was taken up with KE for submission of comments/report and was directed vide letter dated 5<sup>th</sup> March 2012 to refrain from disconnection of electricity supply of all such



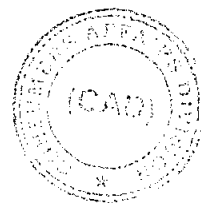
consumers to whom notices have been issued on account of under-utilization of load until and unless the consumers are making payments of their bills. Further, during the hearing of fuel price adjustment of KE for the months of September, October, November and December 2011 held on March 12, 2012 at Karachi, a number of industrial consumers appeared before the Authority and drew attention of the Authority to the fact that despite of issuance of interim restraining order, KE is still disconnecting the power supply of the consumers to whom the notices were issued. The representative of KE was asked as to why the orders of the Authority were not followed, however, he failed to provide any adequate justification for the non-compliance. The Authority took serious notice of non-compliance of its restraining order by KE and decided to pass following interim order:

*"The KESCL shall not disconnect power supply to industrial consumers who have been issued notices of disconnection under section 20 of the Electricity Act 1910 read with chapters 8 and 14 of the Consumer Service Manual for under utilization of the sanctioned load. The Authority shall examine the legal status of these Notices separately, meanwhile, the Authority directs KESCL to restore power supply to all such consumers whose connections were disconnected after issuance of the Notices, within a period of three days, i.e. till March 15, 2012 unless these consumers were either defaulters for payments of their electricity dues or were involved in the theft of electricity."*

KE, instead of complying with the aforesaid interim order of the Authority, challenged it in the High Court of Sindh by filing a Constitutional Petition No. D-956 of 2012: KESC & another vs. NEPRA & others. The Honorable Court through an interim order dated March 15, 2012 suspended Authority's order to the extent of restoration of electric supply of already disconnected consumers.

4. Simultaneously, the industrial consumers also filed civil suits of same nature before the Honorable High Court of Sindh against the notices issued by KE and in this connection a Judgment dated April 17, 2012 in the Suit No. 329 of 2012: Mohammad Hanif & others vs. KESC & another along with connected suits was passed in favour of KE by the learned Single Bench. The Judgment of single judge was challenged by filing high court appeals which were decided on September 05, 2012 in H.C.A. No. 54 of 2012: Muhammad Javed Bilwani vs. KESC & another along with connected appeals whereby the appeals were dismissed and the Judgment of April 17, 2012 was upheld. The consumers approached the Honorable Supreme Court of Pakistan by filing Civil Petition No. 1546 of 2012: Muhammad Javed Bilwani vs. KESC & another along with connected civil petitions, whereby through an Order dated October 15, 2012, the matter was referred back to the Honorable High Court of Sindh for decision owing to already pending case filed by KE in C.P. No. D-956 of 2012 on similar grounds. The Honorable High Court of Sindh passed its Judgment dated 23<sup>rd</sup> September 2015 in C.P. No. D-956 of 2012. The operative part of the Judgment is reproduced as under:

*"... Respondent No. 1 (NEPRA), while being seized of the complaint filed with it by Respondent No. 2, was justified in restraining the Petitioner No. 1 (KE) from disconnecting the electricity of the industrial consumers facing disconnection notice. Hence, no case for interference under Article 199 of the Constitution is made out. Respondent No. 1 (NEPRA) shall proceed with the complaint pending with it and give its decision in accordance with law. The petition stands dismissed."*



5. Pursuant to the Judgment of the Honorable High Court, a hearing was scheduled for 12<sup>th</sup> January 2016 at Islamabad. In response, KE vide its letter dated 4<sup>th</sup> January 2016 informed that being aggrieved with the judgment of the Honorable High Court of Sindh in C.P. No. D-956 of 2012, KE has filed an appeal before the Supreme Court of Pakistan, which is pending adjudication. KE requested that the matter be held in abeyance till decision by the Supreme Court of Pakistan. Being aggrieved of the judgment of 23<sup>rd</sup> September 2015, the KE has filed a CPLA No. 3055 of 2015: K-Electric v/s NEPRA etc. before the Supreme Court of Pakistan which has granted leave to appeal, however, no order was passed restraining the Authority from adjudication of the complaint. Further, Mr. Tanveer Ahmed Barry, Chairman Sub-Committee - KCCI, Public Sector Utilities, Power & Gas vide letter dated 8<sup>th</sup> January 2016 requested that the date of hearing may be extended and the same be held at Karachi instead of Islamabad.

5. Since there was no restraining order from the Honorable Supreme Court of Pakistan in field, therefore, NEPRA proceeded in light of judgment of 23<sup>rd</sup> September 2015 and a hearing in this regard was conducted on 18<sup>th</sup> March 2016 at Karachi which was attended by representatives of the Complainants and KE. During the hearing, the KE emphasized that it is under no obligation to supply electricity to such industrial units that have their own captive power generation facility as they use supply made available to them by KE not as main source of energy but only a standby source. It was further stated that committing a specified load to its consumers give rise to reciprocal commitment that they would use the electricity as primary source of energy and not as standby source. KE when realized that its sanctioned load was not fully utilized, decided to withdraw the facility by disconnecting the supply of electricity by relying on clause (c) of subsection (1) of Section 20 of the Electricity Act, 1910 and on Clause 8.1 of Chapter 8 of the Consumer Service Manual. To the contrary, the complainants argued that disconnection of power supply to the industrial consumers was unjustified and unlawful. They further elaborated their version under NEPRA Act and NEPRA Eligibility Criteria, 2003 stating that it is the responsibility of licensee to supply electricity within its service territory on a non-discriminatory basis to all such consumers who meet the eligibility criteria. They contended that as none of the industrial units, which were facing disconnection notice, had breached the eligibility criteria therefore they had every right to be supplied electricity. However, disconnection can only be triggered if they had committed theft of electricity or not paid the bills. In the present case none of the industrial units that were served with disconnection notice, had breached the eligibility criteria therefore the question of withdrawing the load, even partially, does not arise. It was also argued that as the consumers pay fixed charges for making available to them the full sanctioned load, irrespective of actual consumption, the KE was bound to maintain the sanctioned load at all times and cannot even partially withdraw it. It was further argued that as per Clause 4(1) PART-II of NEPRA Eligibility Criteria, 2003, it was the responsibility of a licensee to reinforce its common distribution system in order to provide electric power to all its consumers and as per NEPRA Performance Standards (Distribution) Rules, 2005, the cost so incurred was even allowed to be adjusted in the tariff. Thus, it was submitted that even the financial burden so incurred was to be passed to the consumers but KE failed to develop necessary infrastructure in order to increase its generation capacity to ever increasing demand for electricity and instead restoring to the practice of load shedding which forced many industrial units to set up their own power generation facility.

6. The case has been examined in detail in light of the documents made available by all the concerned parties, arguments advanced during the hearing and applicable law and following has been analyzed:

- i. KE issued notices to more than 300 industrial consumers, wherein it was alleged that the consumers are generating their own electricity and they have kept the connection of KE for stand-by purposes, which tantamount to use of electricity for the purpose-





other than that for which it was sanctioned. Accordingly, a number of industrial connections were disconnected. As per KE, such action has triggered Clause 8.1 of the Consumer Service Manual (CSM) which empowers it to disconnect the electricity supply of the consumers on the basis of keeping the sanctioned load of KE on standby. Clause 8.1 of the CSM is reproduced hereunder:

*"8.1 DISCONNECTION*

*A premises is liable to be disconnected if the consumer is a defaulter in making payments of the energy consumption charges bill(s), or if he is using the electric connection for a purpose other than for which it was sanctioned, or if he has extended his load beyond the sanctioned load even after receipt of a notice in this respect from the respective distribution company."*

As per the industrial consumers, KE coercively obtained undertaking from them for utilization of 50% of the sanctioned load; such an action by KE is unjustified and in violation of applicable law.

- ii. The entire discussion boils down to the interpretation of the phrase "using the electric connection for a purpose other than that for which it was sanctioned". As per practice this phrase has been interpreted in relation to the particular category for instance, domestic, commercial, industrial, etc., and the said provision would only trigger if the connection is sanctioned under one category and utilized under a different category. However, in this scenario the consumer did not manoeuvre the respective category; instead they have switched over to self-generation as KE failed to supply uninterrupted electric supply.
- iii. As per the provisions of the NEPRA Act and NEPRA Consumer Eligibility Criteria, 2003, it is the responsibility of the licensee to supply electricity within its service territory on a non-discriminatory basis to all such consumers who meet the eligibility criteria laid down by Authority. KE failed to provide uninterrupted power supply to the consumers as per NEPRA standards which compelled the consumers to keep the option of self-generation for their industries. Had KE provided uninterrupted power supply to the industrial consumers, then its stance for issuance of notices would have been justified.
- iv. When a consumer obtains a particular load of electricity sanctioned from KE, this load basically represents total requirement of electricity which it intends to utilize. He, therefore, genuinely expects that the entire sanctioned load committed to it would be made available to him at all times for consumption. However, KE failed to fulfill its responsibilities and legal obligations.
- v. The industrial consumers, on account of irregular and unreliable supply of electricity over a long period of time, suffered production/business losses and decided to look for alternative source of energy. Setting up one's own power generation facility to supplement its energy needs may result in loss of revenue to KE, however, the loss so incurred is due to KE inability to meet the demand of its service territory. It was solely on account of the failure of KE to discharge its contractual as well as legal obligation that many consumers were constrained to seek uninterrupted power supply by setting up their own in-house generation facility.



- vi. It was the prime responsibility of KE, as a licensee, to meet the ever increasing demand of energy anywhere in its service territory by increasing its generation and transmission capacity, so that the consumers may have full confidence in the supply system of KE. The consumers have the right to be supplied with reliable electric power to the extent of their sanctioned load by KE and KE is bound to maintain the requisite supply level. Under clause 4.1 of the NEPRA Consumer Eligibility Criteria, 2003 it is the duty and responsibility of KE to reinforce its distribution system within its service territory according to the demand of energy.
- vii. It is beyond logic that a person would heavily invest in alternative source of energy and keep the most convenient source of energy on standby. However the frequent interruptions which resulted in loss of business forced the consumer to look for alternative means. Mere committing a specified load to its consumers without ensuring reliable supply of energy is not sufficient to seek reciprocal commitment that a consumer would use KE's electricity as its primary source of energy. It is only when the requisite supply is made available at all times that the reciprocal commitment can be enforced.
- viii. Furthermore, reliance on clause (c) of subsection (1) of Section 20 of the Electricity Act, 1910, which allows the KE to cut off supply where the supply of energy was no longer required was, therefore, totally misplaced. Likewise, if the consumers have arranged for their own in-house source of energy to backup their energy requirements and at the same time retain the source made available by the KE this would not in any manner mean that it is using KE's electric connection for a purpose other than for which it was sanctioned in order to attract Clause 8.1 of Chapter 8 of the Consumer Service Manual.
- ix. As per tariff terms and conditions of KE approved by the Authority, there is no restriction on consumers to utilize the sanctioned load and maintain any specific load factor. The industrial consumers pay fixed charges for utilization of their sanctioned load, irrespective of actual consumption, and KE was bound to maintain the sanctioned load at all times and cannot even partially withdraw the same. As such, obtaining an undertaking by KE from the consumers for utilization of 50% of the sanctioned load is unjustified.

7. Foregoing in view, it is established that the action of KE with respect to issuance of notices to industrial consumers on account of under-utilization of sanctioned load and obtaining undertaking from them to utilize 50% of the load is illegal and in violation of the provisions of the NEPRA Act and applicable documents. Therefore, KE is directed to refrain from issuing such notices & disconnection of supply and obtaining such undertaking(s) from its consumers, in future. The complaints are disposed of accordingly.

Islamabad, August 29, 2016

Member (Consumer Affairs) 29/8/16.

